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**OFFICE OF PETITIONS**

In re Application of :  
Howard et al. : DECISION ON APPLICATION  
Application No. 09/820,552 : FOR  
Filed: March 29, 2001 : PATENT TERM ADJUSTMENT  
Atty Docket No. 108344.00013 :

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT - PRE-GRANT," filed June 19, 2006. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from seventy-four (74) days to two hundred three (203) days.

The application for patent term adjustment is **GRANTED to the extent indicated herein.**

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the notice of allowance is **one hundred seventy-one (171)** days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On June 5, 2006, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 74 days. On June 19, 2006, applicants timely submitted the instant application for patent term adjustment<sup>1</sup>. Applicants dispute the reduction of 94 days associated with the filing on May 2, 2003 of a response to the non-final Office action mailed October 28, 2002. Applicants state that a reply was filed on February 28, 2003, and that the response was

<sup>1</sup> PALM records indicate that the Issue Payment was filed on August 31, 2006.

resubmitted on May 2, 2003 because the original response was misplaced by the Office. Thus, the reduction for this delay pursuant to § 1.704(b) should be 31 days, not 94 days. Further, applicants assert that, given that the response was actually filed on February 28, 2003, a period of adjustment of 128 days pursuant to §§ 1.702(a)(2) and 1.703(a)(2) should be entered for the Office taking until November 3, 2003 to respond. In support thereof, applicants submitted a copy of their return postcard receipt evidencing filing of the response on February 28, 2003.

Applicants state that the application is not subject to a terminal disclaimer.

Applicants are correct. The application history shows that the reply is properly considered filed on February 28, 2003. Furthermore, applicants' characterization of the basis for and amounts of the corrections to the adjustments and reductions of patent term in this application given the filing of the reply on February 28, 2003 is correct.

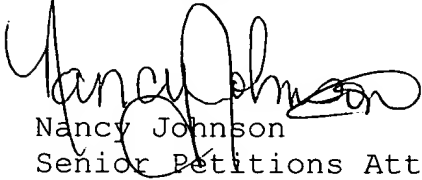
However, a review of the record reveals a further basis for reduction. Specifically, after filing the response on February 28, 2003, on April 1, 2003, applicant filed an Information Disclosure Statements (IDS). The record does not support a conclusion that the IDS was expressly requested by the examiner. Nor do applicants argue that it was. Furthermore, the IDS was not accompanied by a § 1.704(d) statement. Accordingly, a reduction of 32 days pursuant to 37 CFR 1.704(c)(8) is being entered.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the notice of allowance is 171 days.

Receipt of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

The application is being forwarded to the Office of Patent Publication for issuance of the patent. The patent term adjustment indicated on the patent will include any additional patent term adjustment accrued for Office delay in issuing the patent after payment of the issue fee and all outstanding requirements having been met.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", is written over the typed name.

Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions

Enclosure: Copy of REVISED PAIR Screen